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Utah Supreme Court

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**IN THE SUPREME COURT
of the
STATE OF UTAH**

SALT LAKE CITY, a municipal
corporation of the State of Utah, and
J. BRACKEN LEE,

Clerk, Supreme

Plaintiffs and Appellants,

vs.

THE METROPOLITAN WATER
DISTRICT OF SALT LAKE
CITY, a corporation, and SALT
LAKE COUNTY,

Defendants and Respondents.

Case
No. 9617

UNIVERSITY UTAH

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Brief of Plaintiffs and Appellants

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Brief of Plaintiffs and Appellants

NATURE OF THE CASE

The plaintiffs brought this action to determine the validity of taxes levied by defendant The Metropolitan Water District of Salt Lake City for the year 1961, and to secure a declaratory judgment relating to the taxing power of said defendant under the statutes of this state. Plaintiff J. Bracken Lee also seeks recovery of taxes paid under protest.

DISPOSITION BEFORE LOWER COURT

On November 24, 1961, the court, upon the stipulation of the parties hereto, heard the case upon its merits in connection with plaintiff's Order To Show Cause why defendant The Metropolitan Water District of Salt Lake City should not be restrained from disposing of the unappropriated cash surplus then in the hands of said defendant. The lower court granted judgment for the defendants and held (1) the tax assessed and levied by the defendant Metropolitan Water District of Salt Lake City on August 7, 1961, was valid, (2) that the plaintiffs are not entitled to have any part of the money paid by Salt Lake City to said defendant for water sold and delivered to the City credited upon or deducted from the taxes levied by said Metropolitan Water District, and (3) that the defendant Metropolitan Water District may levy taxes in one year for the purpose of carrying on the operations of the District during subsequent years.

RELIEF SOUGHT ON APPEAL

The plaintiffs-appellants seek the reversal of the trial court's holdings as above enumerated and judgment in accordance with the prayer of the complaint.

STATEMENT OF FACTS

The plaintiff Salt Lake City is, and was, a city of the first class in the State of Utah at all times ma-

terial to this lawsuit. The plaintiff J. Bracken Lee is, and was, a resident taxpayer of Salt Lake City, Utah, at all times material hereto and paid, under protest, property taxes for 1961 levied against his residence at 2031 Laird Avenue which included an amount of \$10.99 levied by the Metropolitan Water District. (Exhibit #4.) The defendant Metropolitan Water District of Salt Lake City is, and at all times material herein was, a corporation organized and existing under and by virtue of the laws of the State of Utah, having its principal place of business in Salt Lake County. The defendant Salt Lake County is a political subdivision of the State of Utah and was charged with the responsibility of collecting taxes for the benefit of the Metropolitan Water District in 1961.

On the 7th day of August, 1961, the defendant Metropolitan Water District adopted a resolution levying taxes upon all taxable property within its corporate limits which are conterminous with, and consist of, the entire area of Salt Lake City, State of Utah, at the rate of twenty-five cents on each \$100.00 of assessed valuation, which would result in revenue of approximately \$639,690.00 to the District. (Exhibit #1, p. 7.) At the time this tax was levied, the Metropolitan Water District had an unexpended, unappropriated cash surplus in excess of two million dollars. (Paragraph 8 of the Answer, R. 2, Paragraph 5 of Defendants' Findings of Fact, R. 83, and Statement of Income and Retained Revenues for Years Ended December 31, 1960 and 1959, as set forth on page 4

of Exhibit 3.) The Statement of Income and Retained Revenues of the Metropolitan Water District of Salt Lake City (Exhibit 3, page 4) reveals that its total income from operations for the year ended December 31, 1959, amounted to \$873,853.07, and that its total operating expenses for the same period amounted to only \$289,508.68, *leaving a net income from operations of \$584,344.39 to which were added tax revenues of \$611,928.21 and interest income of \$45,942.59 resulting in a NET INCOME FOR THE YEAR of \$1,242,197.19.* In the year ended December 31, 1960, the District's statement shows total income from operations to be \$1,025,344.61 and total operating expenses of \$571,361.17, *leaving a net income from operations of \$453,983.44 which, when supplemented by tax revenue of \$625,523.20 and interest income of \$66,039.65 and reduced by an amount of \$33,095.08 for loss on abandonment of fixed assets, resulted in a NET INCOME FOR THE YEAR of \$1,112,451.21.* The correctness of the foregoing statement was confirmed by the testimony of Hampton C. Godbe, Assistant Manager and Treasurer of The Metropolitan Water District of Salt Lake City. (R. 53-57). Mr. Godbe also testified that said statement had been adopted by the Metropolitan Water District as its statement. (R. 56). Although Mr. Godbe resorted to vague and devious observations that a tax levy was necessary and essential for the operation, maintenance and administration of the District (R. 44, 58, 71-72) he finally admitted that the District's income from operations exceeded its operat-

ing expenses in 1959 and 1960 and that its entire tax revenues created a surplus fund for those years. (R. 73, 76). He also testified that the District's total income has been increasing constantly. (R. 67). It should also be noted that the sales of water by the District to Salt Lake City for the years 1959 and 1960 amounted to \$497,769.00 and \$819,123.00 respectively, and for that portion of 1961 up until October 16, such sales amounted to \$608,525.00. (Paragraph 13 of the Complaint as admitted by Paragraph 13 of the answer, R. 3, 17.) It is thus apparent that the sales of water by the District to Salt Lake City in 1959 and 1960 far exceed the District's total operating expenses of \$289,508.68 for 1959 and \$571,361.17 for 1960 as shown on the Statement of Income and Retained Revenues of the Metropolitan Water District at page 4 of Exhibit 3. It necessarily follows therefrom that the testimony of Mr. Godbe that the sale price of water to Salt Lake City is less than the District's cost of such water (R. 47) and that portion of defendants' Finding of Fact No. 5 (R. 83) to the effect that the surplus funds of the District are "derived * * * from the sale of water to others than Salt Lake City" are without basis in fact. As a matter of fact the sales of water by the District to others than Salt Lake City in 1959 amounted to only \$362,777.80 and in 1960 amounted to only \$131,691.70 (by subtracting sales to Salt Lake City from total water sales for such years as shown on the Statement of Income and Retained Revenue of the Metropolitan Water District at page 4 of Exhibit 3). And yet the District showed a

Net Income from Operations of \$584,344.39 for 1959 and \$453,983.44 in 1960. It therefore becomes undisputed that both the net income from operations and the cash surplus of the District consist chiefly of revenues derived from the sale of water by the District to Salt Lake City. And Mr. Godbe also testified that the water sold to Salt Lake City by the District is a commodity that is sold and delivered by it and when the sale is consummated, the City is at liberty to do with the water as it sees fit. (R. 27).

The Metropolitan Water District admits that it has not credited the payments made by Salt Lake City for water against taxes levied by the District (Paragraph 14 of the Complaint, R. 3, as admitted in Paragraph 14 of the Answer at R. 17; Finding of Fact No. 7, R. 84) and the Lower Court held, as a matter of law, that the plaintiffs were not entitled to have such payments so credited. (Paragraph 5 of defendants' Conclusions of Law, R. 85, and Paragraph 2 of the Decree, R. 88.)

Unlike all other municipal corporations or tax supported institutions, the Metropolitan Water District of Salt Lake City levies taxes not for expenditure in the year for which they were levied but for expenditure in subsequent years. Thus Mr. Godbe testified that taxes levied in 1960 were actually used for operating expenses in 1961 (R. 57-59) and that the District operated on reserve funds (R. 57) and does not issue tax anticipation notes for operating capital. (R. 60). He also testified that the District's income for 1961 had

come from tax revenue, sale of water and interest earnings on investments (R. 59) and that such income was not segregated into separate funds but was deposited into one general fund. (R. 44, 58, 71-73).

In addition to the foregoing, Mr. Godbe testified that the Metropolitan Water District had many proposed projects relating to the acquisition, storage and distribution of water resources which would cost many millions of dollars. (R. 35-41). However, Mr. Godbe testified that such proposals had not been submitted to the voters of the Metropolitan Water District of Salt Lake City (R. 60) and that the District does not plan or intend to submit such proposals to said voters for their affirmance or disaffirmance in the foreseeable future. (R. 67-70). It necessarily follows therefrom that the defendant Metropolitan Water District of Salt Lake City fully intends to charge the residents and taxpayers of Salt Lake City such rates for water supplied to Salt Lake City as will, *when augmented by tax revenues levied solely for the purpose of enlarging existing cash surpluses*, put the Board of Directors of said District in a position of absolute control in determining the cost and need of capital outlays of the District without seeking the approval of the District's tax-paying voters as contemplated by the enabling statute relating to the District's incurring indebtedness in excess of its ordinary annual income and revenue. Mr. Godbe also testified that the Metropolitan Water District is under no contractual obligation to Salt Lake City to provide such facilities. (R. 63).

STATEMENT OF POINTS

POINT I.

APPELLANTS ARE ENTITLED TO HAVE PAYMENTS FOR WATER MADE BY SALT LAKE CITY TO THE METROPOLITAN WATER DISTRICT OF SALT LAKE CITY DEDUCTED FROM TAXES LEVIED BY THE DISTRICT BY VIRTUE OF SECTION 73-8-43, UTAH CODE ANNOTATED, 1953.

POINT II.

THE METROPOLITAN WATER DISTRICT OF SALT LAKE CITY DOES NOT HAVE THE RIGHT TO LEVY TAXES FOR THE PURPOSE OF CREATING A CASH SURPLUS.

POINT III.

THE METROPOLITAN WATER DISTRICT OF SALT LAKE CITY DOES NOT HAVE THE RIGHT TO LEVY TAXES IN ONE FISCAL YEAR FOR THE PURPOSE OF CARRYING ON THE OPERATIONS OF THE DISTRICT FOR SUBSEQUENT FISCAL YEARS.

POINT IV.

THE TAX LEVIED BY THE METROPOLITAN WATER DISTRICT OF SALT LAKE CITY IN 1961 WAS INVALID.

POINT V.

THE LOWER COURT ERRED IN GRANTING JUDGMENT TO THE DEFENDANTS.

POINT VI.

THE PLAINTIFFS SHOULD BE GRANTED JUDGMENT IN ACCORDANCE WITH THE PRAYER OF THE COMPLAINT.

ARGUMENT

POINT I.

APPELLANTS ARE ENTITLED TO HAVE PAYMENTS FOR WATER MADE BY SALT LAKE CITY TO THE METROPOLITAN WATER DISTRICT OF SALT LAKE CITY DEDUCTED FROM TAXES LEVIED BY THE DISTRICT BY VIRTUE OF SECTION 73-8-43, UTAH CODE ANNOTATED, 1953.

The basic question involved is whether or not the City is entitled to have all payments for purchases of water from the Metropolitan Water District applied

to the reduction of taxes which would otherwise be levied against the taxpayers of Salt Lake City under the statutes relating to the Metropolitan Water District. The purpose of this brief is to demonstrate that from the statutes involved no other construction can reasonably be given except that such credit shall be given for all payments made by cities to metropolitan water districts for the purchase and delivery of water.

The crucial section in making such determination is Section 73-8-43, Utah Code Annotated, 1953, and especially the first four sentences thereof, which read as follows:

“Sec. 73-8-43. Cities, the areas of which are included within metropolitan water districts incorporated hereunder, are hereby authorized to pay to such districts, *out of funds from the sale of water or othed funds not appropriated to some other use*, such amounts as may be determined upon by the govenning bodies, or other bodies, boards, commissioners or officers having control of such funds, thereof, respectively. Such payments may be made in avoidance of taxes as herein provided, *or otherwise*, and shall not be deemed gratuitous or in the nature of gifts, *but shall be deemed payments for water* or services in connection with the distribution of water. *Any city making any such payment to any district incorporated hereunder, whether in avoidance of taxes or otherwise, shall receive credit therefor and the amount of the payment so made by any city shall be deducted from the amount of taxes which would otherwise be levied against property lying therein as herein provided.* In the event

that payment so made by any city shall exceed the amount of taxes which would otherwise have been levied against property within such city, the amount of such excess without interest shall be carried over and applied in reduction of taxes levied, or which would otherwise have been levied during the ensuing year or years. * * *” (Emphasis added).

It will be noted that the above quoted section is clear and unequivocal, especially the third sentence wherein it is expressly provided that any city making payment to any district shall receive credit therefor and the amount of payment so made by any city shall be deducted from taxes. It would seem elemental that payments for water by Salt Lake City to the Metropolitan Water District should “be deemed payments for water” within the terminology of the above statute. And it would also appear beyond dispute that payments for water by Salt Lake City to the Metropolitan Water District would be from “funds not appropriated to some other use” by the city.

It is the general rule of statutory construction that words of a statute will be interpreted in their ordinary acceptation and significance and the meaning commonly attributed to them. 50 *Am. Jur., Statutes*, Sec. 238; *Emmertson v. State Tax Commission*, 93 U. 219, 72 P. 2d 467, 113 A.L.R. 1174. And where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation, and the court has no right to look for or impose another

maening. 50 *Am. Jur., Statutes*, Sec. 225; *Sutherland, Statutory Construction, 3rd Edition*, Sec. 4502; *Salt Lake Union Stock Yards v. State Tax Commission*, 93 U. 166, 71 P. 2d 538. It is also uniformly held that a statute will be construed so as to give it effect and meaning in preference to a construction which will render it ineffective and meaningless. 50 *Am. Jur., Statutes*, Sec. 357. In accordance with the above rules it is stated in 50 *Am. Jur., Statutes*, Sec. 225, at pages 206-207, with ample supporting authority as follows:

“In the case of * * * unambiguity, it is the established policy of the courts to regard the statute as meaning what it says and to avoid giving it any other construction than that which its words demand. The plain and obvious meaning of the language used is not only the safest guide to follow in construing it, but it has been presumed conclusively that the clear and explicit terms of a statute expresses the legislative intention, so that such plain and obvious provisions must control. A plain and unambiguous statute is to be applied and not interpreted, since such a statute speaks for itself, and any attempt to make it clearer is a vain labor and tends only to obscurity. * * * ”

Thus, it is held that “any construction which contradicts the letter of a statute should be carefully scrutinized, and applied with caution and circumspection, lest the judgment of the court be substituted for that of the legislature.” 50 *Am. Jur., Statutes*, Sec. 241 and cases therein cited. As was stated in *Jay v. Boyd*, 351 U. S. 345, 357, 100 L. Ed. 1242, 1254, 76 S. Ct. 919, 927 (1956):

“But we must adopt the plain meaning of a statute, however severe the consequences.”

It should also be noted that Section 73-8-43, Utah Code Annotated, 1953, is not limited, as claimed by the defendant, to payments made by the city in lieu of taxes under Section 73-8-38, but it states that payments made in that manner “*or otherwise*” shall be deemed payments for water or services in connection with the distribution of water. As stated above actual payments for water made by Salt Lake City to the District would certainly “be deemed payments for water” under the statute and thereby qualify as a payment “otherwise” than in lieu of taxes under Section 73-8-38. The above section taken in connection with other provisions of the Metropolitan Water District Act clearly evidences a legislative intent that water districts can tax only when they are unable to sell enough water to raise funds in a sufficient amount to cover what they would otherwise receive in property taxes. In other words, property taxes are to be levied only in the event water sales are less than the permissible levy of property taxes. Therefore, as an example, if the Metropolitan Water District of Salt Lake City is to levy taxes on the city’s residents, its sales to the city must be less than the $2\frac{1}{2}$ mill tax levy. In 1961 the $2\frac{1}{2}$ mill levy will net the Metropolitan Water District approximately \$639,000. The city’s payments to the Metropolitan Water District for 1960 and the first half of 1961 are over \$650,000; consequently, the Board of Directors of the Metropolitan Water District should have allowed a credit

to the residents of Salt Lake City, under Section 73-8-47, Utah Code Annotated, 1953, prior to July 1, 1961, and not levied any taxes upon the taxpayers of Salt Lake City for the calendar year 1961. This legislative intent that metropolitan water districts are to be operated without benefit of taxation, insofar as possible, is evidenced in other sections of the Metropolitan Water District Act. Section 73-8-31 provides that the "Board of Directors shall fix such rates for water furnished as will, in conjunction with the proceeds of the maintenance and operation tax authorized by Section 73-8-18 (i) above, pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by such district, pay the interest on any bonded or other debt, and so far as practicable, provide a sinking or other fund for the payment of the principal of such debt as the same may become due; it being the intention of this section to require the districts to pay the interest and principal of its indebtedness from the revenues of such district, so far as practicable."

The provisions of the law relating to taxing powers are to be strictly construed, even in the case of water districts. At least the decision of the Utah Supreme Court, in the case of the *Bountiful Water Conservancy District v. Board of Commissioners of Bountiful*, 5 Utah 2d 142, 298 P. 2d 524, would seem to so indicate. In that case the Supreme Court held that ambiguous language relating to taxing authority would be resolved against the taxing authority and in favor of the tax-

payer, even where the public policy of water conservancy and sound water management is a factor in the law suit. This is in accordance with the general rule that tax laws are to be strictly construed against the state and in favor of the taxpayer and, therefore, where there is reasonable doubt as to the meaning of a revenue statute it should be resolved in favor of those taxed. *Sutherland, Statutory Construction*, 3rd Edition, Sec. 6701. In this case we do not even have the problem of a "reasonable doubt" as to the meaning of the statute in question. Its provisions are clear and unambiguous and should be given effect in accordance with the foregoing authority.

It should also be noted that the construction of Section 73-8-43 as contended for by the plaintiffs would not affect the power of the District to levy taxes for the retirement of its general obligation revenue bonds under Section 73-8-26, Utah Code Annotated, 1953, which specifically requires that "(t)he full faith and credit of the district shall be pledged to the payment of its general obligation and general obligation revenue bonds and taxes shall be levied * * * fully sufficient to pay such part of the principal of and interest on general obligation revenue bonds as the revenues of the district pledged thereto may not be sufficient to meet." Furthermore, taxes levied to pay principal of and interest on the bonds of the district are not subject to the limitation of twenty-five cents on each one hundred dollars of the assessed valuation of taxable property of the District under the provisions of Section 73-8-18 (i), Utah Code

Annotated, 1953. In connection with the above, it is interesting to note that Mr. Godbe testified that the District has never had to levy a special tax for the retirement of the eight million dollar bond issue authorized by the taxpayers of the District in 1958 for the construction of the Little Cottonwood Water Treatment Plant and that it was not expected that it would be necessary for the District to levy such a tax. (R. 48). Thus, it is apparent that the District has been meeting its bonded indebtedness from the revenue of the District *and that it has accumulated over a two million dollar surplus consisting in large part of the 2.5 mill general tax levy being questioned in this appeal in spite of its bonded debt.*

POINT II.

THE METROPOLITAN WATER DISTRICT OF SALT LAKE CITY DOES NOT HAVE THE RIGHT TO LEVY TAXES FOR THE PURPOSE OF CREATING A CASH SURPLUS.

Section 73-8-18 (i), Utah Code Annotated, 1953, authorizes the Metropolitan Water Board to:

“levy and collect taxes for the purposes of carrying on the operations, and paying the obligations of the district; * * * provided, however, that taxes levied under this section *for administering the district and operating its properties* shall not exceed twenty-five cents on each one

hundred dollars of the assessed valuation of taxable property in the district. Taxes levied to pay principal of and interest on the bonds of the district, to pay indebtedness and interest thereon owed to the United States of America, or to pay assessments or other amounts *due* any water users' association or other entity, public co-operative or private, *from which the district procures water, shall not be subject to the foregoing limitation.* * * * ” (Emphasis added.)

An examination of the above statutory grant of authority necessarily leads to the conclusion that no power to levy that particular tax for the purpose of creating a surplus for future operating expenses or future acquisition of water rights was intended or included therein. Such a tax was intended solely “for administering the district and operating its properties” — purely operational expenses for the taxing period involved. To hold otherwise would render ineffective the provisions of Section 73-8-22, Utah Code Annotated, 1953, which provides as follows:

“Whenever the board of directors of any metropolitan water district incorporated under this act shall, by ordinance * * * determine that the interests of said district and the public interest or necessity demand the acquisition, construction or completion of any source of water supply, water, waterworks or other improvement, works or facility, or the making of any contract with the United States or other persons or corporations, or the incurring of any preliminary expense, necessary or convenient to carry out the objects or purposes of said district wherein an indebtedness or obligation shall be created to sat-

isfy which shall require a greater expenditure than the ordinary annual income and revenue of the district shall permit, said board of directors may order the submission of the proposition of incurring such obligation or bonded or other indebtedness for the purposes set forth in the said ordinance, to such qualified electors of such district as shall have paid a property tax in the year preceding such election, at an election held for that purpose. * * *

Section 73-8-25, Utah Code Annotated, 1953, provides that, if the above election favors such a proposition, "the district shall thereupon be authorized to incur such indebtedness or obligation."

In light of Mr. Godbe's testimony that the District contemplates a capital improvements program running into millions of dollars but does not anticipate any need to submit such proposed improvements to the electors of the District, it becomes apparent that the controlling body of the Metropolitan Water District intends to perpetuate such a surplus from the sale of its water and the imposition of the aforementioned general tax levy upon the taxpayers of Salt Lake City that it thereby acquires sole power to determine the needs of the District without permitting the people to voice their approval or disapproval of such projects. This is the type of centralization of power in bureaucratic bodies which deprives the people of their basic freedoms and subjects them to taxation without representation. It becomes the more apparent when it is recognized that the governing body of the Metropolitan Water District is not

answerable to its taxed subjects for its actions through the process of elections.

It is clear that the authority vested in the Metropolitan Water Board under the above statutes is limited to levying taxes for administrative and operational expenses within stated limits and to pay bonded indebtedness and any amounts "*due*" for the purchase of water or water rights in addition thereto. Such tax levies are limited to the fiscal years involved under Section 73-8-36, Utah Code Annotated, 1953. In the event that expenditures in excess of current annual income are deemed necessary for the acquisition of water or facilities, authority therefor must be obtained from the electorate as provided. There is no authority in the statutes of this state which would allow the levy of taxes by the Metropolitan Water Board in anticipation of expenses other than those contemplated for the particular fiscal year for which the taxes are levied.

The authority contained in Section 73-8-18 (m), Utah Code Annotated, 1953, to "invest any surplus money" in certain securities cannot be interpreted to authorize the creation of surpluses by taxation contrary to the express provisions of the statute in relation thereto. The above cited Section 73-8-18 (m) can relate only to such surpluses as may be lawfully created through the exercise of granted or implied powers, i.e., the surplus realized from the sale of water at rates established by the District.

The powers of water districts are limited to those

expressly granted by statute and also those necessarily or fairly implied, or incident to the powers expressly granted, or essential to the accomplishment of the declared objects and purposes of the water district. Section 73-8-3, Utah Code Annotated, 1953; *Lehi City v. Meiling*, 87 U. 237, 48 P.2d 530; 94 C.J.S., *Waters*, sec. 243 (5). And our Supreme Court has generally adhered to a policy of strictly limiting the extension of municipal powers by implication, particularly with respect to the extension of tax powers. *Moss v. Board of Commissioners of Salt Lake City*, 1 U. 2d 60, 261 P.2d 961. This is the general rule, applicable to "quasi-municipal" corporations. *Sutherland, Statutory Construction*, 3rd Edition, Sec. 6501; 37 *Am. Jur., Municipal Corporations*, Sec. 6, p. 625, footnote 4. The court in the Moss case declared the rule in this state to be as follows, at page 964 of 261 P.2d:

"The City's power to tax is derived solely from legislative enactment and it has only such authority as is expressly conferred or necessarily implied. This court has not favored the extension of the powers of the city by implication (citing cases), and the only modification of such doctrine is where the power is one which is necessarily implied (citing cases). *Unless this requirement is met, the power cannot be deduced from any consideration of convenience or necessity, or desirability of such result, and no doubtful inference from other powers granted or from ambiguous or uncertain provisions of the law would be sufficient to sustain such authority.*" (Emphasis added.)

Certainly it cannot be said that the asserted right to levy taxes to establish a surplus for future expenditures in excess of annual revenues can be implied from a statute in abrogation of specific provisions therein which expressly provide the means of acquiring funds for such expenditures. Express provisions of statutes prevail over any possible implied provisions which contradict them. 82 *C.J.S., Statutes*, Sec. 347, page 720.

POINT III.

THE METROPOLITAN WATER DISTRICT OF SALT LAKE CITY DOES NOT HAVE THE RIGHT TO LEVY TAXES IN ONE FISCAL YEAR FOR THE PURPOSE OF CARRYING ON THE OPERATIONS OF THE DISTRICT FOR SUBSEQUENT FISCAL YEARS.

Section 73-8-36, Utah Code Annotated, 1953, provides as follows:

“On or before the 20th day of August the board of directors of the district shall by resolution *determine the amount of money necessary to be raised by taxation during the fiscal year beginning the 1st day of January next preceding* and shall fix the rate of taxation of the areas of each separate city within the district, designating the number of cents upon each one hundred dollars assessed valuation of taxable property in each of said areas in each county and shall levy a tax accordingly.

“(a) Sufficient to meet interest and sinking fund requirements on, and/or any payment to principal of, outstanding bonded and other indebtedness of said district; * * * or on any contract or other indebtedness and

“(b) For all other district purposes.” (Emphasis added.)

The above statute is clear and unambiguous. It permits only the levy of taxes for money necessary to the conduct of the District's operations *for the fiscal year beginning on the preceding January 1st*, not for the District's operations for any fiscal year subsequent to the date of fixing the tax rate. As has been pointed out under Point II, the power of the district to levy a general tax under Section 73-8-18 (i), Utah Code Annotated, 1953, is limited to purposes of “administering the district and maintaining and operating its properties.” These, then, are the district purposes for which the District's Board of Directors “shall fix the rate of taxation” under Section 73-8-36 as above set forth. And such purposes must relate to the fiscal year commencing on the preceding January 1st. The levy of taxes in one fiscal year by a tax supported unit of government for undetermined and speculative use in the future is entirely foreign to our concept of government as well as being in direct conflict with statutory provisions as in this case. This is particularly egregious where the practice would permit the accumulation of large tax surpluses and thereby remove from the taxpayers their statutory right to determine the extraordinary capital needs of the District by vesting such

power solely in the hands of a non-elected board of directors.

In view of the authorities cited under Point I with respect to the effect to be given plain, unambiguous language in a statute, it would appear clearly beyond dispute that the Metropolitan Water District of Salt Lake City may not levy a general tax in one fiscal year for expenditure by the District in the following or subsequent fiscal years. The fact that this was done in 1961 and previous years is undisputed.

POINT IV.

THE TAX LEVIED BY THE METROPOLITAN WATER DISTRICT OF SALT LAKE CITY IN 1961 WAS INVALID.

The plaintiffs incorporate herein the arguments set forth under POINTS I, II and III.

POINT V.

THE LOWER COURT ERRED IN GRANTING JUDGMENT TO THE DEFENDANTS.

The plaintiffs incorporate herein the arguments set forth under POINTS I, II and III.

POINT VI.

THE PLAINTIFFS SHOULD BE GRANTED JUDGMENT IN ACCORDANCE WITH THE PRAYER OF THE COMPLAINT.

The plaintiffs incorporate herein the arguments set forth under POINTS I, II and III.

CONCLUSION

Regardless of the semantic smokescreen employed by the defendant Metropolitan Water Board to obscure the real nature of its unappropriated cash surplus accumulated during 1959 and 1960 from profits realized from the sale of water and taxes levied against the taxpayers of Salt Lake City, it is clear that its so-called "emergency" or "reserve" fund in excess of two million dollars was simply a cash surplus created in large part by a "double tax" upon Salt Lake City's taxpayers. This is so because such taxpayers must pay for water consumed by them the same as the District's water consumers outside the city and yet, in addition thereto, are subjected to an ad valorem tax which swells a surplus already realized by the District through its sale of water. Such a practice is contrary to the laws of the State of Utah and in particular the tax levied by the Metropolitan Water District of Salt Lake City in 1961 was invalid for the following reasons: (1) Payments for water made by Salt Lake City were not credited against the tax levied by the District contrary to Section 73-8-43, Utah Code Annotated, 1953; (2) Said tax was levied for the sole purpose of enlarging an existing cash surplus realized by the District from the sale of water thereby removing from the people, to the extent of the tax revenue collected, their right to determine the

need of capital expenditures made in excess of the District's ordinary income and revenue; and (3) It was not levied for district purposes for the fiscal year 1961 contrary to Section 73-8-36, Utah Code Annotated, 1953.

For the above reasons the judgment of the lower court should be reversed and plaintiffs should be granted judgment in accordance with the relief sought in the complaint.

Respectfully submitted,

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